

GENERAL TERMS AND CONDITIONS

6.01 General Contract Terms

6.01.01 Entire Agreement

This ITB and the Vendor's response thereto shall be incorporated into two (2) contracts by the execution of formal agreements, specimen copies of which are attached hereto in *Section 7.02 - Appendix B*. Any reference in this ITB or other documents to a singular contract shall be deemed to include both contracts, unless the context clearly indicates otherwise. No alteration or variation of the terms of these contracts shall be valid unless made in writing and duly signed by the parties thereto. Oral understandings of this agreement are not incorporated therein and no alterations or variations of the terms thereof shall be binding on any of the parties unless made in writing between the parties. These contracts shall be amended by written agreement duly executed by the parties; every such amendment shall specify the date of its provisions and shall be effective as agreed to by the parties. These contracts and amendments, if any, are subject to approval by the Department of Health and Human Services (hereinafter referred to as HHS) and the Governor of the State of Alabama.

Execution of the contract and posting of the performance bond shall authorize the Vendor to undertake performance of the contract and shall entitle Vendor to be reimbursed for costs incurred in such performance, subject to all terms and conditions of the contract.

6.01.02 Notice to Parties

Any notice to the Agency under these contracts shall be sufficient when mailed to the Commissioner of the Alabama Medicaid Agency, P. O. Box 5624, Montgomery, Alabama 36103-5624. Any notice to the Vendor shall be sufficient when mailed to the Vendor at the address given on the return receipt from this ITB or on the contract after signing. All notices shall be given by certified mail, return receipt requested.

6.01.03 Headings and Titles

Any headings or titles used to help identify any part of this ITB or any contract upon which it is based are for reference purposes only and shall not be deemed as controlling the interpretation or meaning of any provision of this ITB or any contract upon which it shall be based.

6.01.04 Compliance with Federal and State Requirements

The Vendor shall perform all services under these contracts in accordance with applicable federal and state statutes and regulations. The Agency retains full operational and administrative authority and responsibility over the Alabama Medicaid Program in accordance with the requirements of the federal statutes and regulations as the same shall

be amended from time to time including the Health Insurance Portability and Accountability Act of 1996. The Vendor will be considered a Business Associate of the Agency and will be required to sign a Medicaid Business Associate Addendum. (See sample in *Section 7.14 - Appendix N.*)

6.01.05 Term of Implementation Contract

The implementation agreement shall be effective upon execution by all necessary parties and shall proceed from contract award until the later of September 30, 2011 or the date the Agency determines the Vendor has completed all Statement of Work tasks and is prepared to fulfill all requirements in *Section 3 – Requirements*.

6.01.06 Term of Operational Contract

The operational contract shall be for seven (7) years beginning October 1, 2011, and ending September 30, 2018. The Vendor shall process claims transferred from the previous Vendor and those claims received after the Friday of the last check write prior to September 30, 2011, except for those claims remaining unpaid at the close of business on September 30, 2011. Such unpaid claims shall be transferred promptly to the Agency or another Vendor as designated in writing by the Agency.

6.01.07 Beginning Work Under Contracts

The Vendor acknowledges and understands that these contracts are not effective until they have received all requisite State approvals, and the Vendor shall not begin performing work under these contracts until notified to do so by the Agency. The Vendor is entitled to no compensation for work performed prior to the effective date of these contracts.

6.01.08 Contract Content and Other Priority Documents

The contracts shall include the following:

- Executed contract
- ITB, and any amendments thereto
- Vendor's response to the ITB
- The Agency's written responses to prospective Bidders' questions
- Vendor's clarifications as requested by the Agency during the evaluation process.

The contracts shall be construed in accordance with and in the order of the applicable provisions of:

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- Title XIX of the Social Security Act, as amended, and regulations promulgated thereunder by HHS and any other applicable federal statutes and regulations
- The statutory and case law of the State of Alabama
- The Alabama State Plan for Medical Assistance under Title XIX of the Social Security Act, as amended
- The Alabama Medicaid Agency Administrative Code
- The Alabama Medicaid Provider Manual
- The Agency's written responses to prospective Bidders' questions
- Vendor's clarifications as requested by the Agency during the evaluation process.

6.01.09 Contract Amendments

These contracts shall be deemed to include all applicable provisions of the State Plan and of all state and federal laws and regulations applicable to the Alabama Medicaid Program, as they may be amended. In the event of any substantial change in such Plan, laws, or regulations, which materially affect the operation of the Alabama Medicaid Program, or the costs of administering such Program, either party, after written notice and before performance of any related work, may apply in writing to the other for an equitable adjustment in compensation caused by such material change. Payment for administrative expenses, which as determined by the Agency, exceed the scope of work as described in the ITB (for example material enhancements to the AMMIS not required to be performed by the maintenance and modification teams as described in the ITB and the Vendor's proposal) shall require amendment to these contracts specifying the scope of such services and the amount payable therefore. Such payment shall not exceed the lesser of documented cost or approved estimated cost, based on rates specified in *Section 7.07 – Appendix G - Pricing Schedules*.

6.01.10 Changes to the Statement of Work

During implementation and operation, if the Vendor considers that any written or oral communication, including any order, direction, instruction, interpretation, or determination, received from the MMIS Implementation Project Manager, Fiscal Agent Liaison Officer or any Alabama Medicaid agent or representative, or that any other act or omission of the Alabama Medicaid Agency, its agent or representative (an "Event") constitutes a change to the scope of the Statement of Work of this ITB but is not plainly identified, labeled, or titled as such, the Vendor shall advise the designated Agency contact person in writing within ten (10) business days of the Event and shall request written confirmation of the Event. The notice shall state:

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- The nature and pertinent circumstances of the communication, act, or omission regarded as a change in scope of the Statement of Work by the Vendor
- The date of the communication, act, or omission, and the identification of each individual involved in such communication, act, or omission, listing his or her name and function
- The identification of the documents involved
- The substance of any oral communications
- The particular technical requirements or contract requirements regarded as changed
- The direct and foreseeable consequential effect of the communication, act, or omission regarded as a change to the scope of the Statement of Work, including the number of hours required from the staff to accomplish the change and the manner and sequence of performance or delivery of supplies or services, identifying which supplies or services are or shall be affected.

The Agency shall respond within ten (10) days of receipt of the Vendor's notice, either:

- To countermand the action or communications regarded as an Event
- To deny that the Event is a change in the scope of the Statement of Work
- To confirm that the Event is a change to the scope of the Statement of Work by issuance of a written notice, or
- If the information in the Vendor's notice is inadequate to permit a decision to be made, advise the Vendor as to what additional information is required and establish the date by which this information shall be furnished.

If the Vendor complies with any order, direction, interpretation, or determination, written or oral, without providing the notice, in accordance with this section, the Agency shall not be liable for any increased price, delay in performance, or contract nonconformance by the Vendor.

If the Vendor does not agree with the decision of the Agency designee, the Vendor has thirty (30) days to appeal the decision to the Commissioner of Medicaid.

For the purposes of ordering changes to the scope of the Statement of Work during Implementation, the term "MMIS Implementation Project Manager" shall not include any representative of the MMIS Implementation Project Manager, whether or not such representative is acting within the scope of his or her authority, except in those instances where the MMIS Implementation Project Manager has notified the Vendor in writing, citing the authority of this section, that a specified individual has the authority to order

changes to the scope of the Statement of Work, and a description of the exact scope and duration of the individual's authority.

For the purposes of ordering changes to the scope of the Statement of Work during Operations, the term "Fiscal Agent Liaison Officer" shall not include any representative of the Fiscal Agent Liaison Officer, whether or not such representative is acting within the scope of his or her authority, except in those instances where the Fiscal Agent Liaison Officer has notified the Vendor in writing, citing the authority of this section, that a specified individual has the authority to order changes to the scope of the Statement of Work, and a description of the exact scope and duration of the individual's authority.

6.01.11 Additions to Permanent Staff

Both the Vendor and the Agency must agree upon additions to contract-required staff or key personnel. The reimbursement of the staff cannot exceed the current Vendor rate being paid for equivalent staff.

6.01.12 Force Majeure

Neither party to this contract shall be responsible for delays or failures in performance resulting from acts beyond the control of such party. Such acts shall include but not be limited to: acts of God, strikes, riots, lock-outs, acts of war, epidemics, fire, earthquakes or other disasters.

6.01.13 Not a Debt of the State

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment 26. It is further agreed that if any provision of this contract shall contravene any statute or Constitutional provision or amendment, either now in effect or which may, during the course of these contracts, be enacted, then that conflicting provision in the contract shall be deemed null and void. The Vendor's sole remedy for the settlement of any and all disputes arising under the terms of these contracts shall be limited to the filing of a claim with the Board of Adjustment for the State of Alabama.

6.01.14 Use of Federal Cost Principles

For any terms of these contracts which allow reimbursement for the cost of procuring goods, materials, supplies, equipment, or services, such procurement shall be made on a competitive basis (including the use of competitive bidding procedures) where practicable, and reimbursement for such cost under these contracts shall be in accordance with 48 CFR Parts 300 to 399. Further, if such reimbursement is to be made with funds derived wholly or partially from federal sources, such reimbursement shall be subject to Vendor's compliance with applicable federal procurement requirements, and the determination of costs shall be governed by federal cost principles.

6.01.15 Non-assignment

These contracts shall not be assigned without written consent of the Agency. Except under exceptional circumstances, no such consent shall be given.

6.01.16 Subcontracts

The Vendor may subcontract for any services necessary to the completion and maintenance of this contract and to the performance of its duties under this contract with advance written approval by the Agency of both the subcontracted function and the subcontractor. Subcontractors include those whose services shall be purchased or software licensed by the Vendor, and any business partnerships between the Vendor and others. Subcontractors shall demonstrate the capability to perform the function to be subcontracted at a level equal or superior to that of the Vendor. All subcontracts shall be in writing, with the subcontractor functions and duties clearly identified, and shall require the subcontractor to comply with all applicable provisions of this ITB. The Vendor shall at all times remain responsible for the performance by any subcontractors approved by the Agency. The Vendor's performance bond and Vendor's responsibility for damages shall apply whether performance or nonperformance was by the Vendor or one of its subcontractors. The Agency shall not release the Vendor from any claims or defaults of this contract which are predicated upon any action or inaction or default by any subcontractor of the Vendor, even if such subcontractor was approved by the Agency as provided above. The Vendor shall give the Agency notice in writing by certified or registered mail of any action or suit filed against it by any subcontractor and prompt notice of any claim made against the Vendor by any subcontractor or vendor, which in the opinion of the Vendor may result in litigation related in any way to this contract with the State of Alabama.

6.01.17 State Ownership

The State of Alabama shall have all rights of ownership in software, any modifications thereof and all associated documentation designed, developed or enhanced by the Vendor for the AMMIS in the performance of its duties under this agreement. The Vendor shall obtain for the Agency any necessary licenses for all commercial or proprietary software not owned by the Vendor that is necessary for the performance of the duties and obligations expressed in this agreement. HHS reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and authorize others to do so, such software, modifications, and documentation.

6.01.18 Firm and Fixed Price (Refer to 1.18 Proposal Prices)

6.01.19 Contractor not Entitled to Merit System Benefits

Under no circumstances shall the Contractor be entitled to receive the benefits guaranteed to state employees under the Merit System Act.

6.01.20 Conservation of Resources

To the extent practicable and economically feasible, the Vendor shall utilize products and services that conserve natural resources and protect the environment and are energy efficient.

6.02 Termination

6.02.01 Termination for Bankruptcy

The filing of a petition for voluntary or involuntary bankruptcy or a company or corporate reorganization pursuant to the Bankruptcy Act shall, at the option of the Agency, constitute default by the Vendor effective the date of such filing. The Vendor shall inform the Agency of any such action(s) immediately upon occurrence by the most expeditious means possible (i.e. telephone, fax, Federal Express, regular mail, etc.).

6.02.02 Termination for Default

The Agency may, by written notice, terminate performance under these contracts, in whole or in part, for failure of the Vendor to perform any of the material contract provisions. In the event the Vendor defaults in the performance of any of the Vendor's material duties and obligations, written notice shall be given to the Vendor specifying default. A copy of the written notice shall be sent to the Surety for the Vendor's Performance Bond.

The Vendor shall have thirty (30) calendar days, or such additional time as agreed to in writing by the Agency, after the mailing of such notice to cure any default. In the event the Vendor does not cure a default within thirty (30) calendar days, or such additional time allowed by the Agency, the Agency at its option may notify the Vendor in writing that performance under the contract is terminated and proceed to seek appropriate relief from the Vendor and Surety. If it is determined, after notice of termination for default, that the Vendor's failure was due to causes beyond the control of and without error or negligence of the Vendor, the termination shall be deemed a termination for convenience under [Section 6.02.04](#).

6.02.03 Termination for Unavailability of Funds

Performance by the State of Alabama of any of its obligations under these contracts is subject to and contingent upon the availability of state and federal monies lawfully applicable for such purposes. If the State of Alabama, in its sole discretion, deems at any time during the term of these contracts that adequate monies lawfully applicable to this agreement shall not be available for the remainder of the term, the Agency shall promptly notify the Vendor to that effect, whereupon the obligations of the parties hereto shall end as of the date of the receipt of such notice and the contract shall at such time be canceled without penalty to the State of Alabama or the Federal Government.

6.02.04 Termination for Convenience

The Agency may terminate performance of work under the Contract in whole or in part whenever, for any reason, the Agency, in its sole discretion determines that such termination is in the best interest of the State. In the event that the Agency elects to terminate the contract pursuant to this provision, it shall so notify the Vendor by certified or registered mail, return receipt requested. The termination shall be effective as of the date specified in the notice. In such event, the Vendor will be entitled only to payment for all work satisfactorily completed and for reasonable, documented costs incurred in good faith for work in progress. The Vendor will not be entitled to payment for uncompleted work, or for anticipated profit, unabsorbed overhead, or any other costs.

6.03 The Vendor's Duties Upon Expiration/Termination

6.03.01 Procedure for Termination

Prior to the conclusion of these contracts, the Vendor shall provide, at no extra charge, full support and assistance in turning over the complete and current AMMIS to the Agency or its agent. The Agency desires a low-risk turnover that is transparent to recipients, providers, and users. Specific objectives are to provide for an orderly, complete, and controlled transition to a successor Vendor; and to minimize any disruption of processing and services provided to recipients, providers, and operational users of the system.

The Vendor must:

- Stop work under these contracts on the date and to the extent specified in the notice of termination.
- Place no further orders or subcontracts for materials or services, except as may be necessary for completion of such portion of work under these contracts as is not terminated.
- Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination.
- Assign to the Agency, in the manner and to the extent directed by the Agency, all of the rights, title, and interest of the Vendor under the orders or subcontracts so terminated, in which case the Agency shall have the right, in its discretion, to settle, pay or deny any or all claims arising out of the termination of such orders and subcontracts.
- With the prior approval or ratification of the Agency settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions

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of these contracts. Failure to obtain prior approval shall result in loss of the Agency reimbursement.

- Complete the performance of such part of the work as shall not have been terminated by the notice of termination.
- Take such action as shall be necessary, or as the Agency shall direct, for the protection and preservation of any and all property or information related to these contracts which is in the possession of the Vendor and in which the Agency has or shall acquire an interest.
- Upon Agency direction the Vendor shall change the disposition of pending claims transactions to deny.

6.03.02 Delivery of AMMIS

Approximately nine (9) months prior to expiration or upon termination of the contract, on a schedule and in a manner specified by the Agency, the Vendor shall deliver to the Agency, for no additional compensation, those *AMMIS deliverables listed in Section 7.11 Appendix K* plus all enhancements added during the contract and all data entry software. All deliverables shall reflect the then current operational system. Failure to deliver the required items under these provisions shall constitute default.

6.03.03 Transfer of Documents

At the Agency's discretion, but no later than three (3) days following expiration or termination of the contract, the Vendor, at its expense, shall box, label, and make readily accessible in the Vendor's Montgomery facility, the following items:

- All unprocessed original claims (sorted by claim type and clearly labeled), both paper and electronic media in the format in which they were submitted.
- All unprocessed refunds and adjustments (including all supporting documentation and correspondence organized in such a way as to allow easy identification of corresponding original claims).
- All original claims in pending status with applicable worksheets.
- All provider enrollment contracts and agreements and all pending provider enrollment requests/changes.
- Correspondence.
- All other unprocessed transactions and/or documents.

In the event that the last financial cycle of the contract period is more than one (1) week from the end of the contract period, all of these items shall be made available weekly.

6.03.04 Change of Address

The Vendor shall no later than the last postal business day of the contract submit to the United States Postal Service a standard change of address form indicating the new mailing address supplied to it by the successor Vendor. A change of address shall be turned in for each street address, post office box, or post office drawer used for receiving delivery of Medicaid claim forms and correspondence.

6.03.05 Dialogue

The Vendor shall at any time during the transition period and for a period no less than sixty (60) calendar days after expiration of the contract, answer all questions and provide any dialogue and training that the Agency in its sole discretion deems necessary to enable the successor Vendor to take over the system. All such communications shall be with or through the Agency's Fiscal Agent Liaison Officer or designee.

6.03.06 Post-Turnover Activities

In order to provide post-turnover support, the Vendor shall provide, at no charge to the Agency, the services of an on-site senior systems analyst and a senior programmer/analyst each of who have worked on the AMMIS for at least one (1) year. These two (2) individuals are required to be on-site for the ninety (90) calendar days following contract termination. The individuals proposed by the Vendor must be approved by the Agency. The Agency shall provide working space for these individuals and shall retain the authority to prioritize their responsibilities on a full-time basis to support post-turnover activity.

The Vendor shall also be responsible for, and must correct at no cost, any malfunctions that existed in the system prior to turnover or which were caused by lack of support at turnover, as shall be determined by the Agency within six (6) months following the turnover of operations.

6.03.07 Financial Closeout

Effective ninety (90) calendar days before contract expiration or upon notice of termination, the Vendor shall have all checks issued to providers printed with the statement "VOID AFTER 30 DAYS." All Medicaid bank accounts created under this contract shall be closed and all funds remitted to the Agency no later than sixty (60) calendar days following expiration or termination of the contract. The Agency shall be responsible for replacement checks. All financial records shall remain readily accessible in the Montgomery facility until completion of the bank account closeout and any accompanying audit of the Vendor's financial records. Within sixty (60) calendar days

after expiration or termination of the contract, the Vendor shall provide an imaged copy of all canceled Medicaid provider checks that have not been furnished previously.

6.03.08 Maintenance of Software

The Vendor shall maintain all software and production data files used in the performance of the contract for at least one hundred twenty (120) calendar days after the expiration or termination of the contract and shall maintain such at a readily accessible place and shall make them available to the Agency on demand in the format and media requested.

6.03.09 Facilities and Equipment

Office space, as specified in *Section 2.02.02.04 – Location and Facility Requirements*, for Agency personnel, shall remain available until expiration or termination of the contract. The physical relocation of Agency staff from the Vendor's facilities to the successor's facilities shall be the sole responsibility of the Agency. Any computer equipment or software provided by the Vendor to the Agency under this agreement that is not the property of the Agency shall remain in operation until expiration or termination of the contract, or any extension thereof.

6.04 Employment

6.04.01 Non-Discrimination Compliance

The Vendor shall comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Executive Order No. 11246, as amended by Executive Order No. 11375, both issued by the President of the United States, the Americans with Disabilities Act of 1990, and with all applicable federal and state laws, rules and regulations implementing the foregoing statutes with respect to nondiscrimination in employment. The Vendor shall not discriminate against any employee or applicant for employment because of a physical or mental disability in regard to any position for which the employee or applicant is qualified. The Vendor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled individuals without discrimination based on their physical or mental disability in all employment practices.

6.04.02 Small Businesses, Minority-Owned Firms and Women's Business Enterprises Utilization

In accordance with the provisions of 45 CFR Part 74 and OMB Circular A-102, affirmative steps shall be taken to assure that small businesses, minority-owned firms and women's business enterprises are utilized when possible as sources of supplies, equipment, construction, and services.

6.04.03 Worker's Compensation

The Vendor must take out and maintain during the initial term of these contracts and any renewal thereof, worker's compensation insurance for all of its employees working as part of this Contract; and, in the event any work is subcontracted, the Vendor must require any subcontractor similarly to provide worker's compensation insurance for all the latter's employees working as a part of this Contract.

6.04.04 Other Insurance

The Vendor must obtain, pay for and keep in force the following minimum insurance coverage and shall furnish a certificate to the Agency evidencing that such insurance is in effect:

- Comprehensive general liability policy with endorsement to insure contractual liability, personal injury, personal and advertising liability waiving right of subrogation against the State,
- Liability insurance against bodily injury or death of any one person in any one accident in the amount of five hundred thousand dollars (\$500,000) and in the amount of one million dollars (\$1,000,000) for the injury or death of more than one person in any accident; and
- Insurance against liability for property damages in the amount of one hundred thousand dollars (\$100,000).

It shall be the responsibility of the Vendor to require any subcontractor to secure the same insurance coverage as prescribed herein for the Vendor, and to furnish to the Agency a certificate or certificates evidencing that such insurance is in effect. Evidence of insurability under these provisions shall be directed to the Agency. In addition, the Vendor must indemnify and save the State harmless from any liability arising out of the Vendor's or any subcontractor's untimely failure in securing adequate insurance coverage as prescribed herein. All such coverage shall remain in full force and effect during the initial term of these contracts and any renewal thereof.

6.04.05 Employment of State Staff

The Vendor shall not knowingly engage on a full-time, part-time, or other basis during the period of these contracts, any professional or technical personnel who are or have been in the employ of the Agency during the previous twelve (12) months, except regularly retired employees, without the written consent of the Agency. Certain Agency employees may be subject to more stringent employment restrictions under the Alabama Code of Ethics, §36-25-1, et seq., Code of Alabama 1975.

6.04.06 Provision of Gratuities

Neither the Vendor nor any person, firm or corporation employed by the Vendor in the performance of these contracts shall offer or give, directly or indirectly, to any employee or agent of the State, any gift, money or anything of value, or any promise, obligation or contract for future reward or compensation at any time during the term of these contracts.

6.05 Guarantees, Warranties, and Certifications

6.05.01 Security and Release of Information

The Vendor shall take all reasonable precautions to ensure the safety and security of all information, data, procedures, methods, and funds involved in the performance under these contracts, and shall require the same from all employees so involved. In compliance with 42 CFR §431.300 et seq., the Vendor shall conform to the requirements of federal and state regulations regarding confidentiality of information about eligible recipients. The Vendor shall not release any data or other information relating to the Alabama Medicaid Program without prior written consent of the Agency. This provision covers both general summary data as well as detailed, specific data. The Vendor shall not be entitled to use of Alabama Medicaid Program data in its other business dealings without prior written consent of the Agency. All requests for program data shall be referred to the Agency for response by the Commissioner only. Unauthorized use of information shall be subject to the imposition of liquidated damages in the amount of twenty thousand dollars (\$20,000.00) per occurrence.

6.05.02 Federal Nondisclosure Requirements

Each officer or employee of any person to whom Social Security information is or may be disclosed shall be notified in writing by such person that Social Security information disclosed to such officer or employee can be only used for authorized purposes and to that extent and any other unauthorized use herein constitutes a felony punishable upon conviction by a fine of as much as five thousand dollars (\$5,000) or imprisonment for as long as five (5) years, or both, together with the cost of prosecution. Such person shall also notify each such officer or employee that any such unauthorized further disclosure of Social Security information may also result in an award of civil damages against the officer or employee in an amount not less than one thousand dollars (\$1,000) with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC Sections 7213 and 7431 and set forth at 26 CFR 301.6103(n).

Additionally, it is incumbent upon the Vendor to inform its officers and employees of penalties for improper disclosure implied by the Privacy Act of 1974, 5 USC 552a. Specifically, 5 USC 552a (1) (1), which is made applicable to the Vendors by 5 USC 552a (m) (1), provides that any officer or employee of the Vendor who, by virtue of his/her employment or official position, has possession of or access to Agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that

disclosure of the specific material is prohibited, willfully discloses that material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than five thousand dollars (\$5,000).

6.05.03 Health Insurance Portability and Accountability Act of 1996 Requirements

All parties shall comply with the provisions of the Health Insurance Portability and Accountability Act of 1996 and any implementing regulations as adopted.

6.05.04 Share of Contract

No official or employee of the State of Alabama shall be permitted any share of these contracts or any benefit that may arise therefrom.

6.05.05 Conflict of Interest

The Vendor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Vendor further covenants that in the performance of these contracts no person having any such known interests shall be employed by the Vendor.

6.05.06 Debarment

The Vendor certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this contract by any federal department or agency.

6.05.07 Performance Bond

In accordance with the provisions of Code of Alabama, 1975, Section 41-16-28, a performance bond in the amount of ten million dollars (\$10,000,000) with a corporate bonding company satisfactory to the Agency as Surety shall be posted by the Vendor at the time of execution of these contracts. This bond shall be in force from that date through the term of the operations contract and ninety (90) calendar days beyond and shall be conditioned on faithful performance of all contractual obligations. Failure of the Vendor to perform satisfactorily shall cause the performance bond to become due and payable to the State of Alabama. The State of Alabama, Department of Finance, Director of Purchasing shall be custodian of the performance bond. Said bond shall be extended in the event the Agency exercises its option to extend the operational contract. An irrevocable letter of credit acceptable to the State shall meet this provision.

6.05.08 Indemnification

The Vendor agrees to indemnify, defend and hold harmless the State, the Agency, and their officers, agents and employees (hereinafter collectively referred to as

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"indemnitees"), for all claims, losses, or suits accruing or resulting from the Vendor's performance or non-performance of its duties under these contracts. The Vendor, at its own expense, shall defend any claim or suit which may be brought against the State for the infringement of any patents, copyrights, proprietary rights or right of privacy arising from the Vendor's or State's use of any equipment, materials, or information prepared or developed in conjunction with performance of these contracts. The Vendor shall, in any such suit, satisfy any final judgment for infringement. Any federal sanction or damages, other than those specified herein, imposed upon the State due to the Vendor's failure to perform its responsibilities under these contracts shall be paid by the Vendor.

The Vendor hereby waives, releases, relinquishes, discharges and agrees to indemnify, protect and hold harmless the indemnitees of and from any and all claims, demands, liabilities, loss, costs or expenses for any loss or damage, (including but not limited to bodily injury or personal injury including death, property damage, workers' compensation benefits, employment benefits, libel, slander, defamation of character and invasion of privacy) and attorney fees, caused by, growing out of, or otherwise happening in connection with these contracts, due to any act or omission (whether intentional or negligent, through theft or otherwise), or due to any breach of this contract, or due to the application or violation of any pertinent federal, state or local law, rule, policy or regulation by the Vendor.

This indemnification applies whether: (1) the activities involve third parties or employees, subcontractors or agents of the Vendor or indemnitees; or (2) a claim results in a monetary obligation that exceeds any contractual commitment.

This indemnification extends to the successors and assigns of the Vendor, and this indemnification and release survives the termination of this contract and the dissolution or, to the extent allowed by law, the bankruptcy of the Vendor.

The Vendor must, at its expense, be entitled to and shall have the duty to participate in the defense of any suit against the indemnitees. No settlement or compromise of any claim, loss or damage asserted against indemnitees shall be binding upon the indemnitees unless expressly approved by the indemnitees.

6.05.09 Compliance with Environmental Standards

The Vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq. and the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq., Executive Order 11738, and other Environmental Protection Agency regulations.

6.05.10 Waiver

No covenant, condition, duty, obligation, or undertaking contained in or made a part of these contracts shall be waived except by written agreement of the parties expressly acknowledging this waiver as a modification of the contracts.

6.05.11 Warranties Against Broker's Fees

The Vendor warrants that no person or selling agency has been employed or retained to solicit or secure these contracts upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee except bona fide employees. For breach of this warranty, the Agency shall have the right to terminate these contracts without liability to the Agency.

6.05.12 Novation

In the event of a change in the corporate or company ownership of the Vendor, the Agency may, subject to approval by HHS and a determination by the Agency that the successor can meet the needs of the Agency, recognize the successor's interest in the transfer of these contracts. The new corporate or company entity shall agree to the terms of the original Contract and any amendments thereto. During the interim between legal recognition of the new entity and the Agency execution of the novation agreement, valid contracts shall continue to exist between the Agency and the original Vendor. When, to the Agency's satisfaction, sufficient assets necessary for the performance of these contracts have been transferred from the original Vendor, the Agency shall approve the novation agreement.

6.06 Disputes and Litigation

6.06.01 Attorneys' Fees

In the event that the State shall prevail in any legal action arising out of the performance or non-performance of this Contract, the Vendor must pay, in addition to any damages, all expenses of such action including reasonable attorneys' fees and costs. This requirement applies regardless of whether the Agency is represented by staff counsel or outside counsel. Fees and costs of defense shall be deemed to include administrative proceedings of all kinds, as well as all actions at law or equity.

6.06.02 Disputes

Except in those cases where the bid response exceeds the requirements of the ITB, any conflict between the bid response of the Vendor and the ITB shall be controlled by the provisions of the ITB. Any dispute concerning a question of fact arising under these contracts which are not disposed of by agreement shall be decided by the Commissioner of Medicaid.

The Vendor's sole remedy for the settlement of any and all disputes arising under the terms of this agreement concerning compensation claimed to be due and payable to the Vendor, or any aspect of the performance of duties by the Vendor shall be limited to the filing of a claim with the Board of Adjustment for the State of Alabama. Pending a final decision of a dispute hereunder, the Vendor must proceed diligently with the performance of these contracts in accordance with the disputed decision.

For any and all disputes arising under the terms of this contract, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation by and through the Attorney General's Office of Administrative Hearings or where appropriate, private mediators.

6.06.03 Litigation

Any litigation brought by the Agency or the Vendor regarding any provision of these Contracts shall be brought in either the Circuit Court of Montgomery County, Alabama, or the United States District Court for the Middle District of Alabama, Northern Division, according to the jurisdictions of these courts. This provision is not intended to, nor shall it operate to, enlarge the jurisdiction of either of said courts, but is merely an agreement and stipulation as to venue.

6.07 Key Personnel and Contract Required Personnel

6.07.01 Key Personnel

The Vendor shall have the following key personnel located within the Vendor's facilities in Montgomery, Alabama:

1. Account Manager - Person responsible for the direction of all aspects of the operation. This person shall serve as the primary liaison to the Agency. For the duration of these Contracts, unless authorized by the Agency, the Vendor shall not relocate or divert in a direct or contingent manner to another contract the person approved by the Agency as the Account Manager.
2. Operations/Claims Processing Manager - Person responsible for claims receipt, data entry, claims resolutions, adjustments, and all other claims processing related functions.
3. Customer Relations Manager for Provider Relations - Person responsible for supervising provider enrollment, the customer relations staff and provider representatives.
4. AMMIS Systems Manager-Person responsible for maintenance of the AMMIS, coordination of the design, testing, and implementation of system enhancements, and supervision of the AMMIS Maintenance and Modification Teams.
5. AMMIS Implementation Manager - Person responsible for coordination of implementation activities.

The Agency shall have the absolute right to approve or disapprove the Vendor's and any subcontractor's key personnel assigned to these Contracts, to approve or disapprove any proposed changes in key personnel, or to require the removal or reassignment of any key personnel found unacceptable by the Agency. The Vendor shall notify the Agency's Fiscal Agent Liaison Officer in writing of any proposed change in key personnel at least thirty (30) calendar days prior to the change. No Vendor initiated change in key personnel shall be approved until a replacement has been approved by the Agency and is on site.

6.07.02 Contract-Required Personnel

The Vendor shall have the following contract-required personnel located within the Vendor's facilities in Montgomery: all key personnel, Quality Assurance Manager, Customer Relations Staff, SURS Analyst, TCM Prior Authorization Coordinator, HCPCS Coordinator, Medical Policy Specialist, Drug Data Warehouse Coordinator, EIS/DSS Technical Support, Provider Quality Assurance Evaluator, Medical Policy Analyst - Register Nurse with certification as a Certified Professional Coder, Medical Policy Analyst with certification as Certified Professional Coder, Systems/Technical Support and the Modification Team Members. A maximum of ten percent (10%) of the modification programming team may be located off the Vendor's Montgomery site unless otherwise approved by the Agency. This arrangement may be allowed as long as production capacity is not compromised and the hours and projects completed by the off-site programmers are documented by time sheets and projects worked on are adequately identified to the Agency. The Agency may require the Vendor to reduce or increase the percentage of the staff located off-site at its discretion. The Agency reserves the right to require a reduction in contract-required staff if during the term of the contract, it is determined that required functions could be performed by fewer than the specified number of individuals.

No diversion of contract-required personnel shall be made by the Vendor without prior written consent of the Agency. The Vendor shall have forty-five (45) calendar days in which to fill vacancies of contract-required personnel with another employee of acceptable technical experience and skills subject to prior written approval of the Agency, such approval not to be unreasonably withheld. The Vendor shall at all times maintain the performance standards and meet all functional requirements of the Contracts.

6.07.03 Other Personnel Requirements

The Vendor shall upon request provide the Agency with a resume of any members of its staff or a subcontractor's staff assigned to or proposed to be assigned to any aspect of the performance of these Contracts. Personnel commitments made on the Vendor's response shall not be changed except as herein provided or due to the resignation of any named individual.

6.08 Records

6.08.01 Records Retention and Storage

In accordance with 45 CFR §74.53, the Vendor shall maintain financial records, supporting documents, statistical records, and all other records pertinent to the Alabama Medicaid Program for a period of three (3) years from the date of the final payment made by the Agency to the Vendor under these Contracts. However, if audit, litigation, or other legal action by or on behalf of the state or federal government has begun but is not completed at the end of the three (3) year period, or if audit findings, litigation, or other legal action have not been resolved at the end of the three (3) year period, the records shall be retained until resolution. Subsequent to the contract term, documents shall be stored in a bonded storage facility accessible to the Agency during normal business hours.

6.08.02 Inspection of Records

The Vendor agrees that representatives of the Comptroller General, HHS, the General Accounting Office, the State of Alabama Department of Examiners of Public Accounts, the Agency and their authorized representatives shall have the right during business hours to inspect and copy the Vendor's books and records pertaining to contract performance and costs thereof. The Vendor shall cooperate fully with requests from any of the agencies listed above and shall furnish free of charge copies of all requested records. The Vendor may require that a receipt be given for any original record removed from the Vendor's premises.

6.08.03 Imaging Requirements

The Vendor shall submit to the Agency no later than sixty (60) days after contract signing, an imaging plan for approval. The Vendor shall provide the Agency with legible imaged copies on COLD or CD/DVD as specified for the following source documents:

- Claims daily on COLD
- EMC facsimiles daily on COLD
- Remittance advices within one business day of each financial cycle on COLD
- Canceled provider checks, front and back, monthly on CD/DVD
- Provider or State initiated adjustment requests daily on COLD
- Other documents as specified in this ITB.

Imaged copies on COLD or CD/DVD must be verified by the Vendor for quality. A verification report with samples must be provided to the Agency monthly. The original

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source document must be retained on-site at the Vendor facility for ninety (90) calendar days after the date of receipt. The Agency reserves the right to reject any imaged copies of source documents if illegible. The Vendor shall correct illegible copies on COLD or CD/DVD within ten (10) days.

6.08.04 System Documentation

The Vendor shall establish and utilize documentation update procedures, including status report meetings with the Agency, to ensure that the AMMIS documentation remains current at all times. The Vendor shall maintain the master copy of all AMMIS documentation and shall furnish the Agency with one (1) complete copy by start of operations, and one (1) copy of each update. The Vendor shall provide the Agency's MMIS Coordinator's Office with a complete copy of all system documentation (e.g. all information maintained in iTRACE, detailed system designs, Data Element Dictionary, systems manuals, user manuals, provider manuals) on CD/DVD by the first Thursday of each month and shall remain consistent with the format of existing documentation. The Vendor shall incorporate any requirement change into all necessary documentation within five (5) days of implementation. The Vendor shall maintain and update monthly the Data Element Dictionary. In October of each year, the Vendor shall supply the Agency with a complete copy of all AMMIS software. The Vendor will also be required to provide a copy of all AMMIS software and systems documentation (in hard copy or electronic format) on request with advance notice.

6.09 Method of Payment and Invoicing

6.09.01 Payment

Payments are dependent upon successful completion and acceptance of described work and delivery of required documentation. Payment for the Vendor services shall be made according to the following provisions:

6.09.01.01 Implementation Phase Payments

The Agency shall provide payment to the Vendor in accordance with the State Purchasing Vendor's bid sheet and the *Section 7.07 – Appendix G - Pricing Schedules* for the MMIS Implementation Phase of this ITB. Payment shall be made monthly for the Agency deliverables accepted and approved (as specified in *Section 7.07 – Appendix G - Pricing Schedules*). The Vendor shall submit invoices to the Agency's MMIS Coordinator on a monthly basis for approved services and deliverables rendered to the Agency in the previous month. Each monthly invoice shall have a cover letter/memo addressed to the Agency's MMIS Coordinator printed on the Vendor's company letterhead. Attached to the Vendor's letter/memo shall be the Vendor's invoice. The invoice shall contain summary level descriptions of each invoiced line item.

6.09.01.02 Operational Costs

The firm and fixed prices for the operational activities not identified as pass-through expenses are reflected on *Section 7.07 – Appendix G - Pricing Schedules*. Compensation for the firm and fixed prices as stated in the Vendor's bid shall be due and payable to the Vendor upon submission to the Agency of a claims payment invoice on a monthly basis, subject to availability of funds. Each monthly invoice shall have a cover letter/memo addressed to the Agency's Fiscal Agent Liaison printed on the Vendor's company letterhead.

6.09.01.03 Definition of a Claim

The following is the definition of a claim, subject to the qualifiers also noted, for the purpose of claim volume accounting. This definition shall apply to administrative claims processing adjudication counts tracked and reported by the Vendor:

- Institutional Claims (UB-04) - A claim is a paper document or an EMC record requesting payment for services rendered during a statement period or date range for which there are one or more accommodation, HCPCS, and/or ancillary codes. This definition includes Part A Medicare crossover claims and encounter claims.
- Pharmacy Claims - A claim is each detail line item of a paper document or an EMC record requesting payment of a specific NDC code rendered to a recipient by the billing provider. This definition includes encounter claims.
- Managed Care Capitation and Case Management Payments - A claim is one payment to a PMP, Lock-In Provider or HMO for all the beneficiaries the provider is responsible for in a given month for a category of beneficiaries.
- All Other Claim Types - A claim is a detail line item on a paper document or an EMC record requesting payment for services rendered to a recipient by a provider on one or more service date(s) for which there is a HCPCS code. This definition includes Part B Medicare crossover claims and encounter claims.

Adjustments to paid claims are not countable as claims, regardless of the number of adjustments made to a paid claim or the reason for the adjustments.

All claims which require reprocessing due to errors caused by the Vendor in processing or due to system design shall not be included in any claims count.

No transaction shall be counted as a claim which does not meet the specific criteria stated above. Only claims adjudicated by the system for payment or denial shall be counted.

6.09.01.04 Pass-through Expenses

Compensation for all approved pass-through expenses shall be paid based on documented costs. The following as specified in this ITB shall be allowable pass-through expenses:

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- All postage expenses directly related to the operation of the Contract, including postal preparation fees for bulk and mass mailings,
- Agency-approved printing of manuals, handbooks, and bulletins, as defined in *Section 3 – Requirements: 3.02.093, 3.02.094, 3.02.095, 3.02.096, and 3.02.098* (excluding enrollment packages), *3.02.099 - Provider Requirements; 3.04.037, 3.04.038, and 3.04.039 - Reference Requirements ; 3.12.011* (PCCM Provider Referral Report), *3.12.014, 3.12.016, 3.12.027, 3.12.028 - Managed Care Requirements.*
- Toll-free telecommunication lines, as defined in *Section 3- Requirements: 3.01.010 (dial up toll free line) - General Requirements, 3.02.135- Provider Requirements; 3.06.002, 3.06.010, 3.06.049 - Claims Requirements; 3.03.098- Recipient Requirements, 3.09.004 – Drug Utilization Review Requirements.*
- Plastic Medicaid identification cards, as defined in *Section 3-Requirements: 3.03.014* (card stock, embossing, mailers and envelopes) - *Recipient Requirements.*
- MMIS hardware and software, and any additional equipment, software upgrades and site licenses necessary to support Agency approved system enhancements. The Vendor shall obtain Agency approval prior to the purchase of any hardware, software, additional equipment, software upgrades or site licenses.

The Vendor shall submit to the Agency for approval, as part of the MMIS Implementation Plan, a plan for determining and documenting pass-through expenses. The Vendor shall make a reasonable effort to obtain the least costly alternative for all pass-through expenses. The Vendor shall take advantage of high volume printing and price comparison-shopping; automation- based rates and service provided by the Postal Service including zip+four, presorting, bar coding and bulk mailing.

6.09.01.05 Enhancements - Personnel/CPU Costs

Payment for work to materially enhance the AMMIS during the operations phase shall be made only when the work to be performed is beyond the requirements expressed in the ITB such as a mandatory project assigned by the Agency which exceeds the scope of work stated in the ITB and the Vendor's proposal and which requires more man-hours than time permits using the contract-required staff. Such payment shall be made in accordance with any contract amendment and shall be calculated using the reimbursement base reflected on *Section 7.07 – Appendix G - Pricing Schedules.*

6.10 Other Requirements

6.10.01 The Vendor's Liaison

The Vendor's Account Manager shall serve as liaison and shall be available and responsible, as the need arises, for consultation and assistance with the Agency personnel; he/she shall attend, upon request, Agency meetings, meetings and hearings of legislative committees and interested governmental bodies, agencies, and officers; and he/she shall provide timely and informed responses to operational and administrative problems whenever arising in administration of the Alabama Medicaid Program. Whenever the Account Manager is not available, the Vendor shall provide a designated alternate that is fully capable of meeting the requirements of this section.

6.10.02 MMIS Implementation Project Manager (MMIS Coordinator)

The Agency's Implementation Project Manager shall be responsible for coordination of implementation activities with the Vendor. Said MMIS Implementation Project Manager, his/her designee(s), and Agency implementation personnel shall have reasonable access to the Vendor's project personnel, facilities, and records for evaluating the quality, appropriateness, and timeliness of deliverables. The MMIS Implementation Project Manager shall have authority on a reasonable basis to call meetings with the Vendor's Account Manager or designee and project personnel, as required, and to assign appropriate technical personnel of the Agency to work with designated staff of the Vendor.

6.10.03 Inspection of Work Performed

The Agency or its authorized representative shall have the right to enter into the premises of the Vendor and all subcontractors, or such other places where duties under the contract are being performed, to inspect, monitor or otherwise evaluate (including periodic testing/validation/verification) the work being performed. All inspections and evaluations shall be performed in such a manner as will not unduly delay work.

6.10.04 Agency's Liaison

The Agency's Fiscal Agent Liaison Officer shall be responsible for coordination of Agency functions and activities with the Vendor, during the operations phase. Said Liaison Officer, his/her designee(s), and Agency audit personnel shall have reasonable access to the Vendor's project personnel, facilities, records, and any portion of the Vendor's bookkeeping system and financial system relating to the Medicaid Program for the purpose of monitoring and evaluating the quality, appropriateness, and timeliness of services. The Fiscal Agent Liaison Officer shall have authority on a reasonable basis to call meetings with the Vendor's Account Manager or designee and project personnel, as

required, and to assign appropriate technical personnel of the Agency to work with designated staff of the Vendor.

6.11 Damages

6.11.01 Liquidated Damages

The purpose of liquidated damages is to ensure adherence to the performance requirements in these Contracts. No punitive intention is inherent. It is agreed by the Agency and the Vendor that, in the event of a failure to meet the performance requirements, damage shall be sustained by the Agency, and that it is and shall be impractical and extremely difficult to ascertain and determine the actual damages which the Agency shall sustain in the event of, and by reason of, such failure; and it is therefore agreed that the Vendor shall pay the Agency for such failures at the sole discretion of the Agency according to the following subsections. Liquidated damage assessments are linked to performance of system implementation or operational responsibilities, as specified in *Section 2 – Statement of Work* and *Section 3 – Requirements* and fulfillment of the requirements as stated in the:

- Executed contract,
- ITB, and any amendments thereto,
- The Vendor's response to the ITB,
- The Agency's written responses to prospective Bidders' questions, and
- The Vendor's clarifications as requested by the Agency during the evaluation process.

Written notification of each failure to meet contractual requirements shall be given to the Vendor. The imposition of liquidated damages is not in lieu of any other remedy available to the Agency. The Agency shall withhold from the Vendor reimbursements amounts necessary to satisfy any damages imposed.

A decision by the Agency not to exercise this damage clause in a particular instance shall not be construed as a waiver of the Agency's right to pursue future assessment of that performance requirement and associated damages. The Agency may, at its sole discretion, return all or a portion of any liquidated damages collected, as an incentive to the Vendor for prompt and lasting correction of performance problems. The Vendor will not be liable for failure to meet response time performance requirements when the failure is due to systems external to the AMMIS contract.

6.11.02 Operational Start Date Damages

If, for any reason, the Vendor does not fully meet the operational start date approved in the Detailed Implementation Schedule and a contract amendment delaying this date or

start-up of a portion of the processing requirements listed in *Section 3 – Requirements* has not been approved by the Agency, then the Vendor shall be liable for all costs incurred by the Agency to continue current AMMIS and the Vendor operations. The Vendor shall also forfeit all claims to reimbursement of monthly expenses or operational payments for that month and each month thereafter until the Agency approves operational readiness.

6.11.03 Certification/Recertification Damages

If the AMMIS does not maintain federal certification for full federal financial participation (FFP) retroactive to the approved operational date and it is determined by the Agency that such failure or loss of certification and FFP is due in whole or in part to the Vendor's performance or failure to perform, then the Vendor shall be liable to the Agency for the amount of that portion of lost FFP attributable to the Vendor's performance or failure to perform.

6.11.04 Violation of Cash Management Agreement

If the Agency is penalized by the U.S. Treasury for violation of the Cash Management Agreement due in whole or in part to Vendor error, the Vendor shall be assessed damages equal to the penalty against the Agency.

6.11.05 Correctness of Payments Damages

If an overpayment or duplicate payment is made and that payment is the result of a failure of the Vendor to either utilize available information or to process the claim for reimbursement in accordance with Agency requirements, the Vendor shall be liable for the amount paid, if the Agency cannot make full recovery using reasonable administrative procedures. The Vendor shall notify the Agency immediately upon discovery of any overpayments or duplicate payments, irrespective of cause. The Agency shall withhold from the Vendor reimbursements the amount necessary to satisfy damages resulting from overpayments or duplicate payments. With the prior written consent of the Agency, the Vendor may pursue recovery of these damages paid to the Agency from the providers who received the overpayments or duplicate payments.

6.11.06 Section 2 – Statement of Work Task Completion Damages

One thousand dollars (\$1000.00) damages per work day, or any part thereof, shall be assessed for each of the first ten (10) calendar days of delay in meeting a task completion date. Two thousand dollars (\$2,000.00) damages per work day, or any part thereof, shall be assessed for each of the next thirty (30) calendar days of delay. Up to four thousand dollars (\$4,000.00) damages per work day, or any part thereof, shall be assessed for each additional day of delay after that. These damages shall be in addition to any amounts assessed for failure to maintain federal certification and/or meet the operational start date.

6.11.07 Timeliness of Claims Processing Damages

Twenty thousand dollars (\$20,000.00) shall be assessed for the first month of each failure to meet timeliness standards specified in *Section 3 – Requirements*. If the Vendor does not cure said failure to meet the Agency's requirements, forty thousand dollars (\$40,000.00) shall be assessed for each consecutive subsequent month a requirement remains unmet. For example, failure to meet the above requirements for four (4) consecutive months shall result in an assessment of damages of one hundred forty thousand dollars (\$140,000.00).

6.11.08 Financial Cycle Schedule Damages

Failure on the part of the Vendor to meet the approved financial cycle schedule, including complete and correct remittance advices and payment release, shall result in liquidated damages of twenty thousand dollars (\$20,000) per business day. This assessment shall begin on the workday following the scheduled financial cycle date and continue until the financial cycle is executed.

6.11.09 Delivery of Reports Damages

The Agency shall impose on the Vendor liquidated damages of one thousand dollars (\$1000.00) per business day for each failure of the Vendor to furnish a required report in an accurate, complete, and usable form to the Agency on or before the due date for such report, or as extended by written agreement with the Agency. Due dates shall be as designated by the Agency. This assessment shall begin on the workday following the due date and continue until such time as the Vendor furnishes the Agency with the report(s) in an acceptable form. Receipt of inaccurate, incomplete and/or unusable reports shall not release the Vendor from damages under this provision. The Vendor shall be subject to this assessment for regularly scheduled reports only if written notification of the Vendor's noncompliance has been given by the Agency prior to the next due date of the report(s) in question. For special request reports, the Vendor shall be subject to this assessment only if written notification of the Vendor's noncompliance has been given within thirty (30) calendar days following the original due date of the report(s) in question. In addition, the Vendor shall be liable for any damages incurred by the Agency due to the Vendor's failure to provide federally-required reports in a timely manner.

6.11.10 System Availability and Response Time Damages

A penalty of seventy-five thousand dollars (\$75,000.00) damages per week shall be assessed for each occurrence of system unavailability in excess of five (5) hours during a continuous five (5) day period. A penalty of two hundred dollars (\$200.00) damages per day shall be assessed for any AMMIS inquiry or update screen that has a documented response time greater than three (3) seconds for inquiries and five (5) seconds for update transactions at the Agency site.

6.11.11 Automated Voice Response System (AVRS) Availability Damages

One thousand dollars (\$1000.00) per hour shall be assessed when the Automated Voice Response System is not available for provider inquiry response for greater than one (1) hour in a day, other than scheduled or Agency-approved down time.

6.11.12 Online Claims Submission and Eligibility Verification System Availability Damages

One thousand dollars (\$1000.00) per hour shall be assessed when the online claims submission and eligibility verification system is not available for provider inquiry response for greater than one (1) hour in a day, other than scheduled or Agency-approved down time.

6.11.13 Electronic Claims Management (ECM) System Availability Damages

One thousand dollars (\$1000.00) per hour shall be assessed when the ECM system is not available for provider inquiry response for greater than one (1) hour in a day, other than scheduled or Agency-approved down time.

6.11.14 Key Personnel Damages

Fifty thousand dollars (\$50,000.00) damages per occurrence shall be assessed for each change in key person, whether proposed in the bid response or currently in the position, who is changed for reasons other than death, resignation, termination for cause or military recall unless replacement is approved by the Agency in advance.

An additional two thousand dollars (\$2,000.00) per day per occurrence shall be assessed for any Vendor initiated vacancy (other than terminations for cause) in a key personnel position.

Two thousand dollars (\$2,000.00) per day per occurrence shall be assessed for any vacancy in a key personnel position. This assessment shall begin on the forty-sixth calendar day of the vacancy and shall be in addition to any other assessments due to the vacancy.

6.11.15 Compliance with Material Contract Provisions Damages

Written notification of each failure to meet material contract requirements not specifically mentioned above shall be given to the Vendor. The Vendor shall have five (5) days from the date of receipt of written notification of a failure to perform to specifications to cure the failure. However, the Agency may, in its sole discretion, approve additional days if deemed necessary. If the Vendor does not resolve the failure

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within this warning/cure time period, damages shall be imposed retroactively to the date of failure to perform. The Agency shall assess liquidated damages in the amount of one thousand dollars (\$1000.00) per day for the first ten (10) days until the non-compliance is corrected. On the eleventh day, the Agency shall increase the amount assessed to one thousand five hundred dollars (\$1500.00) per day for the next ten (10) days. The daily damages rate shall continue to increase by five hundred dollars (\$500.00) at each interval of ten (10) days until compliance is achieved.

6.12 Payment of Damages

Amounts owed the Agency due to liquidated damages shall be deducted by the Agency from any money payable to the Vendor pursuant to this Contract. These amounts may be deducted from any actual damages claimed by the Agency in the event of litigation for non-compliance and default.

6.13 Limitation of Liability

The Agency's remedies and the Vendor's direct liability to the Agency shall be limited to one and a half times the value of the Contract. This limitation shall not apply to tangible property damage or personal injury. The limitation of liability is applicable solely to the Vendor's direct liability to the Agency. Nothing in this section shall be construed as limiting the Vendor's obligation to indemnify the Agency as expressed in the [Indemnification](#) section of this ITB. The Vendor understands and agrees that its obligation to indemnify the Agency as expressed in the [Indemnification](#) section of this ITB is not subject to this limitation.